

PL-II

13558

DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

*[Protest of Air Force Contract Award]*

FILE: B-196097

DATE: April 25, 1980

MATTER OF: Refre and Associates

DIGEST:

1. To extent protester objects to results of application of bid evaluation method expressly stated in solicitation, protest is untimely under GAO Bid Protest Procedures 4 C.F.R. § 20.2(b)(1) (1979) which require protest based on alleged improprieties apparent prior to bid opening to be filed prior to such time.
2. Protester's contention agency should have considered Government's cost of money in bid evaluations is denied since such factor was not specified in solicitation and consideration of such factor would conflict with stated evaluation method.

*DLG 04495*

Refre and Associates (Refre) protests the award of a contract to Lewis Management and Services Company (Lewis) under invitation for bids (IFB) No. F02601-79-B-0033 issued by the U.S. Air Force. For reasons discussed below, this protest is denied.

*CWG 2154*

The IFB called for bids to provide commissary shelf stocking and custodial services and stated that bids would be evaluated by adding the prices quoted for the two option years to the base year bid. It further stated that any bid which is materially unbalanced as to prices for basic and option quantities may be rejected as nonresponsive. It defined an unbalanced bid as one which is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

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As between Refre and Lewis, the bidding results were as follows:

	<u>Refre</u>	<u>Lewis</u>
Base Year	\$ 142,560.00	\$ 152,495.28
Option Year No. 1	154,068.00	155,503.68
Option Year No. 2	166,932.00	155,503.68
Three year total	\$ 463,560.00	\$ 463,502.64

Refre contends that as the contract could be awarded for only the base year, its low bid for that year should have been accepted. It further contends Lewis' bid should have been rejected as materially unbalanced because either its prices for the option years did not provide for known increases in the minimum wages and social security taxes or its bid for the first year was significantly overstated.

The IFB expressly stated at Part I, Section D that bids would be evaluated for purposes of award by adding the prices bid for the option years to the price bid for the base year. Since Refre's various protest letters both to our Office and to the Air Force, as well as its alleged oral protest to the agency were all submitted after the date of bid opening, its protest is untimely to the extent it objects to the application of the stated method of evaluation. Design Concepts, Inc., B-186125, October 27, 1976, 76-2 CPD 365. See also our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1979), which require that protests based upon alleged improprieties which are apparent prior to bid opening shall be filed prior to such time. In any event, it would have been improper under the terms of the IFB for the Air Force to have based its award, as Refre contends it should have, on prices bid for the base year or on prices for the base and first option year.

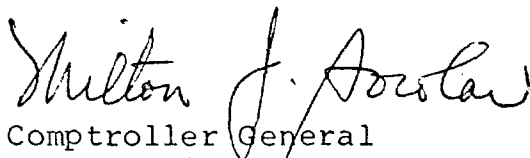
The annual prices bid by Lewis for each of the three years do not vary significantly. Aside from Refre's speculation, there is nothing in the record to indicate Lewis overlooked probable increases in wages, taxes and other costs or believed they would be offset in the option years by the lack of "start-up" costs and improvements.

in management and labor efficiency. Our Office will not look behind a bid in an attempt to, ascertain the business judgments that went into its preparation. See, e.g., S.F.&G., Inc., d/b/a Mercury, B-192903, November 24, 1978, 78-2 CPD 361. Moreover, unless there is reasonable doubt that by making award to a party submitting a mathematically unbalanced bid, award will not result in the lowest ultimate cost to the Government, the bid should not be considered materially unbalanced. Radiology Services of Tidewater, B-194264, June 18, 1979, 79-1 CPD 432. There is no basis for concluding that material unbalancing exists here because the record indicates the Air Force had a known requirement for the option years and was reasonably certain funds would be available to exercise such options. Therefore, its acceptance under the circumstances was proper. Reliable Trash Service, B-194760, August 9, 1979, 79-2 CPD 107.

Because its prices for the first two years are over \$11,000 less than those of the awardee and the Government is borrowing money at high interest rates, Refre contends the Air Force should consider the interest savings associated with its proposal. We find no merit to this contention. The IFB did not specify that the Government's cost of money would be considered in the evaluation of bids. It specifically stated that the evaluation would be on the basis of total cost for all items in the bid schedule. We have held that bids may not be evaluated on a different basis than that set forth in the IFB. Jacobs Transfer, Inc., 53 Comp. Gen. 797 (1974), 74-1 CPD 213.

Finally Refre complains that the agency awarded the contract to Lewis despite Refre's pending protest. Assuming Refre properly filed a protest with the agency before award was made, it was not prejudiced by the agency's award of the contract prior to resolution of the protest since we have determined that the award was proper.

The protest is denied.

  
Acting Comptroller General  
of the United States